

# PETITION

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For Andrew Houstoun late of Garthland,  
Against

John Houstoun now of Drummaſtoun.

**M**Y Lords of Counsel and Session, unto your Lordships humbly means and shews: I your Lordships Servitor *Andrew Houstoun* late of *Garthland*; That where I haveing raised a Reduction and Declarator of Extinction, of a Bond granted by me to the Deceast *John Houstoun* of *Drummaſtoun*, this *Drummaſtons* Grand-Father in the year 1662, and never prosecuted by him, nor his for 30. years; I did insist upon such pregnant evidences and Documents, to instruct the Bond satisfied, that your Lordships were all convinced it was so, but the hazard of taking away Bonds by Presumptions, only, did move your Lordships to find that the presumptions Libeled were not sufficient.

I do now humbly represent to your Lordships, that *Drummaſton* the <sup>prolonged</sup> ~~principal~~ Creditor being altogether diffident of his Right, and I firmly perswaded, that the evidences condescended upon, would be sufficient to null the Bond; I did regulate my debate so, as to insist only upon evidences instantly verified, neglecting other qualifications which required approbation; But now that the plurality of your Lordships have not sustained the presumptions instructed as *per se* sufficient, I beg liberty to resume, what instantly appears, and add others, which I offer to instruct, and intreats that in a matter wherein every man will be perswaded of the justice of what I claim; Your Lordships would be pleased, to allow at least an Expiscation to discover every matter of Fact that may tend to clear the Affair yet furdur.

I do therefore now offer the qualifications following, 1. The Bond is dated in the 1662, never heard of till the 1692. By the space of 30. years.

2. The Creditor to whom my Bond is granted, lived 16. years after the date of the Bond, and never was heard to mention it, albeit I offer to prove that he was a most rigorous and exact Creditor in matters of far smaller moment, and when he provided his Children, he gave them assignation to Debts for their portions; Yet he never assigned this Debt, nor took any notice of it in his Life, nor at his Death; neither was this Bond ever mentioned by the Creditors Heirs by the space of 14 or 15 years after his Decease.

3. *Et separatim*, I condescended, and in a great measure demonstrated the true cause and occasion of granting the Bond, and how it happened not to be retired by me when it was payed as followes, viz. I entered into a communing for the Sale of the Lands of *Isle* in November 1662. the price agreed was 3200. Merks, before either Minut or Disposition past 1200. Merks of the price is advanced in contemplation of the Bargain to be perfected; Therefore I granted a Bond of Borrowed Money, yet bearing no Annual rent till *Whitsonday* 1663 which was the term agreed for entering to the possession of the purchas.

Thereafter there followed a Minut to the best of my memory, and a Disposition was granted about the *Whitsonday* 1663 bearing receipt of the vvhole price.

My Bond, the Minut and Disposition vvere all vwritten by *John Stuart* now of *Physgil* therein designed Servitor to *Thomas Stuart* Provost of *Wigtoun*.

The said *Thomas Stuart* who did dictat all, was a person intirely trusted, and he did receive this Bond which now appears against me at the extending of the Disposition, which is the Reason why it was so many years latent, and one way or another is now recovered from amongst his Papers.

These Particulars I do clear as follows, 1. That *Thomas Stuart* was a person intrusted by me, I instruct by a Bond of Pension of the date of my Bond libelled, whereby I obliged my self for a Pension of 100 lib. yearly, which was a considerable Allowance in the Countrey, and whereof I produce *Physgils* Discharge, as Executor to the said *Thomas Stuart*, which proves that the said *Thomas Stuart* was my Trustee, and I am able to prove that the said *Thomas* my Trustee dyed within a short while thereafter. 2. Tha



2. That his Servant was the Writer of the Bond, & of my Disposition, appears by the Bond produced, & will appear by the Disposition in *Drumastons* custody, which I desire may be ordained to be produced. 3. The said *Thomas Stuart* and his Servant were also Writers of the Minut, which Minut may very probably mention this Bond, or the Sum advanced, or otherwise tend to the clearing of the matter; And therefore it is reasonable and just, that a Diligence should be granted for recovering the said Minut and Disposition to expiscat the whole matter of Fact as far as it can possibly be discovered.

4. To these natural Evidences, that my Bond payable at the Term of the Creditors entry to the Lands I sold, would be allowed in the Price; I further add, that the said *Drumaston* the Creditor being Cautioner for me, with three or four more sufficient persons to *Mackdonal of Freuch*; I granted him a Bond of Relief with two Cautioners, and though he was well secured, yet he did prosecute me most rigorously upon the first surmise that I was to sell the Lands of *Garthland*, and was not at ease until he got himself secured by the Laird of *Garthland* who got the Estate; And your Lordships can never believe that he would have payed the Price of the Lands he bought at the very Term, at which my Bond was payable, and continue silent for so many years without demanding the Principal or Annualrent of that Sum, and yet insist with vigour for obtaining Relief of a Bond, whereof his share was small, and for which he was sufficiently secured by my Bond and two Cautioners,

5. There were several Communiors at my making the Disposition of the said Lands yet alive, who also may appear to be Witnesses, when the Disposition is produced, and were present with the Creditor when he died, by whose Testimonies it may be yet further cleared, and I am hopeful they will remember, that all Sums due to *Drumastoun* were allowed in the Price, and that there was truly no Money then payed, and particularly *Physgil*, who is Writer of the Bond will appear to be Writer of the Disposition also, when the same is produced, and I desire that he may be examined, not only upon the terms of the Disposition, but also what Papers of mine were found by *Thomas Stuart*, to whom he was Executor.

And last of all, I was in use to mark *de die in diem*, any matter of moment transacted by me, which is extant, and regularly kepted, in which Memorial it is marked of the very Date of the Bond, that I had received 800 *lib.* of the price of the Land of *Isle*, and that I had given my Bond for the same. I do not pretend that my Writ will prove by it self: But the Tenor of the Bond & the whole matter, carries such a light and evidence, that the Book of my private Affairs regularly kepted, agreeing so perfectly with the remanent Qualifications. is a most pregnant and convincing Evidence, that the Bond was satisfied; and there are so many Instances mentioned in my former Information, of Bonds taken away by pregnant presumptions, without Writ, that I shal not trouble your Lordships to resume the same, but I am always ready to condescend, and make appear, that the presumptions I offer, are stronger than any of these Recorded.

*May it therefore please your Lordships, to allow me a Diligence for proving the Additional Qualifications I now offer, and especially for recovering the Disposition of the Lands, that the terms of the said Disposition and the Entry may appear, that the same was written by my Trustie, who might reasonably receive my Bond at the delivery of the Disposition; and likewise for recovering the minut written with the same Hand, and for examining the Communiors, Physgil the Writer, and Witnesses; And for recovering any other Writ & Evidents that may tend to clear the Matter, to the effect, that the whole Circumstances may ly before your Lordships, before the Cause be finally determined; and in the mean time, to stop any further effect of the former Interlecutor which proceeded upon the Evidences that lay in the Process only.*

*According to Justice, and your Lordships Answer.*